UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

2008 FEB 28 PM 3:06

TRONSEN	
Plaintiff,	Case No.: 3:08 cv 148
vs.	Plaintiff's BRIEF Supporting a Permanent Injunction
Toledo Lucas County Public Library,	JUDGE CARR
Defendant	

Plaintiff says in support of his request for a Preliminary Injunction barring the Defendant from enforcing a six-month eviction from the premise of the Defendant that:

Defendant seeks to minimize if not prevent harassment of its visitors. This may be a "reasonable" purpose, but in deciding this case, not only the intent of the library, but also the conduct and intent of the actor must be considered, as well as the nature & consequences of the act. Harassment is by definition a continuing if not persistent act; it cannot be slight, casual or transitory[1].

Plaintiff says any actions or conduct cited by defendants were so slight, so fleeting as that they could not be considered harassment even if harassment was a consideration.

The First Amendment is Sacred in American Law:

"Freedom of press, freedom of speech, freedom of religion are in a preferred position[2]."

"But if absolute assurance of tranquility was required, we may as well forget about free speech. and "Under such a requirement, the only 'free' speech would consist of platitudes. That kind of speech does not need constitutional protection[3]." and

"It is well settled that the First and Fourteenth Amendments forbid discrimination in the

[1] Black's law Dictionary
[2] Jones v. City of Opelika 319 U.S. 105
[3] Spence v. Washington, 418 U.S. 405

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regulation of expression on the basis of the content of that expression[4]." and "The inconvenience of having to dispose of unwanted paper is an acceptable burden as least so far as the Constitution is concerned[5]." and "The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it[6]." and People have the right to express freedom of speech going door-to-door, including going upon private property to distribute handbills[7]. In similar cases, this principle has been repeatedly affirmed. Government has no power to restrict expression because of its message, its ideas, its subject matter, or its content[8]. The overwhelming sentiment of the United State Supreme Court is in favor or Freedom of speech, regardless of the content or mode[9].

A. The general rule in Free Speech - Free Expression matters is that Speech, Expression, Utterances, handbills, dodgers, flyers, circulars and other materials may be tendered from one individual to another in public places, i.e. on government property.

B. Plaintiff will show by a preponderance of the evidence that the property - premises of the defendant is or should be treated as though it is a traditional public forum. Plaintiff says that the premises of the defendants has in recent times been used as a public forum.

C. After recognizing the value & import of the General Rule in a free society, one may allow the certain exceptions have been recognized: Those exceptions include:

1. Obscene speech
2. Speech that presents a 'clear & present danger' to those in the immediate area-location of the act. i.e. 'fighting words'.

In general, the speech restriction must be aimed - directed at material that contains 'no (positive) social value'.

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[4] Carey v. Brown 447 U.S. 455, 463,
[5] Bolger v. Young's Drug Products 463 U.S. 60
[6] Marsh v. Alabama 326 U.S. 501.
[7] Martin v. Struthers 319 U.S. 141.
[8] Cohen v. California 403 U.S. 13
[9] R.A.V v. St. Paul 505 U.S. 382; Cantwell v. Connecticut 310 U.S. 296; Simon & Schuster Inc. v. Members of the N.Y. State Crime Victims Bd. 502 U.S. 105

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D. In considering matters of free speech and free expression, the distribution as well as the production of materials is protected[10].

E. In addition, in order for a rule, law, regulation or other restriction (or its enforcement) to be upheld, the rule, law, regulation, must not be unconstitutionally vague. That is: it MUST give persons of common intelligence a clear reading of the nature of the prohibited act.

Plaintiff says the regulation ('Code of Conduct') proposed by defendant as justifying its action(s) was unconstitutionally vague.

F. Courts will not sustain a heckler's veto[11]; that is, the freedom of one who chooses to express him or herself trumps the right of an unwilling recipient.

G. In these matters, it the law hangs NOT on the reaction of the individual to whom a writing is tendered, rather on the act of production and/or distribution itself.

Nevertheless, Plaintiff says that even if the premises of the defendants is not determined to be a public forum:

The purpose (intent) of the actor must be specifically addressed. Where no unlawful purpose is present, there cannot be a wrongful act-.

The determination of this case must be decided according to the rule of strict scrutiny because the contents of a note passed by Plaintiff to another library visitor has become at issue.

H. In any case: courts cannot protect restrictions on speech tendered in public places (government property) unless the restriction is *narrowly drawn* to accomplish a compelling state interest. The mere convenience – comfort of a library visitor is not a compelling interest or matter. In the instant case, the insult / offense to the library visitor was so slight that Plaintiff says his free speech free expression rights are obviously - blatantly Superior to those of the library to end-quell-restrict, or prohibit said expression.

I. Plaintiff said that the enforcement of its regulation, even if construed as permissible, was clearly NOT done-accomplished in the least restrictive manner.

Courts have said that some rules need only be 'reasonable' in order to be upheld;

[10] Winters v. New York 333 U.S. 557
[11] Hedges v. Wauconda Community Sch. Dist. No. 118 9 F.3d 1295

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Plaintiff says that in order to be held reasonable, the following conditions must apply:

1. They still must pass Constitutional muster; the Constitution is the Supreme law of the land, NOT regulations, rules, codes of conduct, etc.
2. The regulation must not be vague or uncertain[12]. It must specifically name the act, conduct, or behavior prohibited.
3. Plaintiff says that this regulation fails because of the following:
    1. It is unconstitutionally vague in writing and as applied in this case.
    2. It does not take into account the purpose that the actor had in his conduct, which is a crucial-critical factor in determining the indicated outcome-resolution.

    The court should allow judicial notice that reasonable restrictions on conduct at school premises may be more restricted than off school property for educational reasons; e.g. to protect the educational purpose, to minimize if not prevent distractions from the mission.

    However, we are not here concerned with such a circumstance or limited purpose. This is a public library.

Plaintiff affirmatively says that just as students to not shed their constitutional rights to freedom of speech - expression at the schoolhouse gates[13].

CAUTIONS:

Plaintiff says that in modern times, the tendency of the USSC has been to allow divergent modalities and venues of expression.

We may ask: In which cases, showing which direction is the USSC headed in determining First Amendment cases?

Constitutionally punish abstract advocacy of force or law violation in overturning Whitney v. California, a 1927 case. (The conviction in Whitney was upheld, but the case was later overruled.) This is a case where Plaintiff in a criminal matter alleged a

[12] Winters. V. New York 333 U.S. 557

[13] Tinker v. Des Moines Sch. Dist. 393 U.S. 503

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connection with an intent to overthrow the government by violent means ('advocating violence').... Quite a stretch from what we're dealing with here. Clarence Brandenburg was convicted in the Ohio courts (Ohio appellate court affirmed) of a violation of the criminal syndication statute *by making a speech*; the Ohio Supreme Court had refused to reconsider the lower courts affirmation (overturned by the USSC).

Here, the government makes no such allegation or even suggestion. This is a case of the slightest inconvenience to a library visitor.

Plaintiff alleges that Ohio courts have inadequately preserved and defended-protected the rights of individuals seeking rightful freedom of Speech – Expression.

In the similar, previous case involving Plaintiff, the library also evicted Plaintiff for passing a non-threatening, non-obscene, non-indecent note to another library visitor by leaving it on the objector's motor vehicle parked in the library parking lot; there was no confrontation, indeed no face-to-face contact between Plaintiff and the objector in the previous matter. In Plaintiff's Complaint relating to that matter (in state court), Plaintiff's COMPLAINT was dismissed on the weakest – flimsiest of reasoning-logic. Plaintiff filed notice of appeal, but an appeal on the merits was never granted.

FALSE STATEMENT- SUGGESTION:

In the Borell MEMORANDUM dated January 18th, 2008, we read: (page 2, 'STATEMENT OF FACTS')

"A woman patron was using the terminal next to the plaintiff." The strong suggestion here is that Plaintiff and the complainant were seated side-by-side. **THIS IS FALSE.** Any verbal contact between the Plaintiff and the complainant was limited to about 5 seconds; there was NO Physical contact.

Dated this February 23, 2008

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

Tronsen **3:08 CV 148**

vs. **Certificate of Service**

Toledo - Lucas County Public Library

On this the 28th day of February, 2008, Plaintiff personally served this document:

Plaintiff's BRIEF Supporting a Permanent Injunction

to:

the clerk of court, and

and Defendant's counsel

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